

13 Official Opinions of the Compliance Board 34 (2019)

- ◆ **6(B)(3) Minutes–Practice in Violation. Failure to post minutes online as soon as practicable. (Violation)**
- ◆ **Violations: § 306(e)(2)**

*Topic numbers and headings correspond to those in the Opinions Index posted on the Open Meetings webpage at www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx

June 18, 2019

Re: Calvert County Special Education Citizens Advisory Committee

By regulation, the Maryland State Department of Education (“MSDE”) requires “[e]ach local school system [to] establish a special education citizens advisory committee to advise the local school system on the needs of students with disabilities within the jurisdiction.” COMAR 13A.05.02.13. This complaint pertains to the advisory committee established by Calvert County’s board of education (“school board”). Specifically, the complaint alleges that the Calvert County Special Education Citizens Advisory Committee (“SECAC”) has been violating the provision of the Open Meetings Act that requires public bodies to post their minutes online “[t]o the extent practicable.” § 3-306(e)(2).¹ According to the complaint, SECAC maintains its own website and posted its minutes there in March 2017—over two years ago—but has not posted minutes of any meeting held since then.

Before complaining to us, the complainant posed his concern to the school board’s administrative assistant. She informed him that SECAC had stopped posting its minutes online because “[w]ebsites are now required to have all posted documents ‘reader accessible,’” and, “[d]ue to the change in website accessibility laws, it is no longer practicable to post these minutes generated by committees who do not have a trained person nor appropriate software to produce a reader accessible document.” The complainant now questions whether the “Americans with Disabilit[ies] Act’s website accessibility requirements absolves a public body from complying with [§ 3-306(e)(2)].”

The school board’s counsel, responding on SECAC’s behalf, states that SECAC is a “separate entity” from the school board, is comprised entirely of volunteers, has its own website, and lacks a “staff of computer experts.” Therefore, the response states, it was not “practicable” for SECAC to post its minutes online. The response further states that school board staff are now in the process of modifying SECAC’s website to link it to the school board’s website and allow school board staff to post SECAC’s minutes online.

The submissions do not provide us with any information on why SECAC and the school board could not have implemented this solution more promptly and whether, in fact, SECAC’s only option under the disabilities laws was to stop posting minutes online.² The submissions do show that

¹ References are to the General Provisions Article of the Maryland Annotated Code (2014, with 2018 supp.).

² It is not our role to advise public bodies on whether their websites conform to the federal and State disabilities laws and whether either set of laws would absolutely bar a particular government entity from posting material

SECAC's minutes and agendas are available from (and thus held by) the school board's Department of Special Education staff, that SECAC's website lists school board staff as the public's point of contact, and that SECAC uses its website for some purposes. Additionally, we note that, under MSDE's regulation, MSDE allocates federal funds to the local school systems to support the activities of their SECACs and that the school systems establish SECACs to "advise the local school system on the needs of students with disabilities within the jurisdiction." COMAR 13A.05.02.13.

In addressing complaints that a public body has not posted minutes online "to the extent practicable," we have considered facts such as the resources available to the public body and other demands on those resources. We have also recognized that we are not always in a position to find, as a fact, what would have been practicable under a particular public body's circumstances at a particular point in time. *See, e.g., 12 OMCB Opinions* 83 (2018). Here, however, the facts lead us to find that SECAC's administrative relationship with the school board would have made it practicable for SECAC and the school board to address SECAC's problem earlier. Thus, while we commend SECAC and the school board for taking steps to solve the problem that school board staff identified to the complainant, we find that SECAC violated the Act by not doing so earlier.

This opinion is subject to the acknowledgement requirement set forth in § 3-211.

Open Meetings Compliance Board

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in formats that are not accessible to individuals with disabilities. In a recent case on the Americans with Disabilities Act, a federal court in Florida, noting "a lack of guidance" on the issue, quoted this past statement from the U.S. Department of Justice:

Although the language of the ADA does not explicitly mention the Internet, the Department has taken the position that title II covers Internet Web site access. Public entities that choose to provide services through web-based applications (e.g., renewing library books or driver's licenses) or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information, unless doing so would result in an undue financial and administrative burden or a fundamental alteration in the nature of the programs, services, or activities being offered.... [A]n agency with an inaccessible Web site may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line.

Price v. Town of Longboat Key, Fla., No. 819CV00591T02AAS, 2019 WL 2173834, at *2 (M.D. Fla. May 20, 2019).